IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 10004 OF 2004

PRAVIN RANCHODDAS CHOUHAN ... PETITIONER

Versus

KIRIT JAYANTILAL SHAH & ORS. .. RESPONDENTS

Mr. Navin Parikh i/b M/s. Mehta & Girdharlal for petitioner

Mr. Rohit Kapadia with Karl Shroff i/b M/s. Dhru & Co. for R-1 & 2

CORAM:-SMT. RANJANA DESAI, J.

DATED:-2-3-2005

P.C.

The petitioner is the original plaintiff. The learned Single Judge of the Small Causes Court and Division Bench of Small Causes Court have held that the Small Causes Court has no jurisdiction to entertain R.A.D. Suit No. 1464 of 2000 filed by the plaintiff and hence the plaintiff has approached this court.

2. The averments in the plaint indicate the following facts on which the

plaintiff is basing his claim. Late Jagjivandas Jethalal was tenant of defendants 3 and 4. The plaintiff took the suit premises on rent from Jagjivandas Jethalal in June, 1972. Jagjivandas Jethalal expired about 20 to 25 years back. The plaintiff is at present paying rent to defendant 1, who is the grandson of late Jagjivandas, however no rent receipts are issued to him. In short the plaintiff's claim is that after the death of original tenant Jagjivandas being sub-tenant of the suit premises prior to 1st February 1973, he has become a deemed tenant of the suit premises. The plaintiff, therefore, inter alia prayed that defendants 3 and 4 be directed to accept the plaintiff as deemed tenant and issue rent receipts in his favour. The plaintiff prayed for a declaration that the plaintiff is entitled to carry on his business peacefully in the suit premises.

3. The plaintiff took out notice for interim injunction. Defendants challenged the jurisdiction of the court to try and entertain the suit and hence the trial court framed issue as regards jurisdiction under Section 9A of the Code of Civil Procedure. Both the courts held that there is no relationship of landlord and tenant between the plaintiff and the defendants and hence the Small Causes Court has no jurisdiction to entertain the suit. Both these orders are challenged before me.

4. I have heard at considerable length to Mr. Parikh, learned counsel appearing for the petitioner. He submitted that both the courts have

drawn an adverse inference from the fact that an incorrect statement is made in the plaint that the plaintiff took the suit premises on rent from late Jagjivandas in 1972 when in fact Jagjivandas had expirekd in 1951. He contended that it is true that an incorrect statement is made in the plaint. However, merely on the basis of that incorrect statement it cannot be said that there is no relationship of landlord and tenant between the parties. This obvious mistake could have been rectified by amending the plaint. On that ground the trial court could not have denied itself the jurisdiction to entertain the suit particularly when the plaintiff has several documents in his possession to establish his case. The learned counsel contended that both the courts have ignored the vital documents on which the plaintiff is relying. He submitted that in fact in the plaint the plaintiff has referred to these documents. He has stated that the rent is being paid atpresent to the grandson of deceased Jagjivandas. The plaintiff has relied on an alleged writing given by defendant 1 as regards receipt of payment. The plaintiff has in his possession electricity bill of 2000, which indicates that the plaintiff is in occupation of the suit premises and has consumed electricity. The keys of the suit premises are with the plaintiff. The plaintiff's cupboards are in the suit premises. These facts could have been established by adducing evidence. The learned counsel contended that it is an accepted principle that jurisdiction of the court has to be decided by

going through the averments of the plaint. The defence of the defendant should not weigh with the court at this stage. In this connection the learned counsel relied on **Abdulla Bin Ali & Ors. v. Galappa & Ors., A.I.R. 1985 S.C. 577** and **Smt. Laxmibai Narayan Satesa v. Dattatraya Tukaram Jarande, A.I.R. 1983 BOMBAY 289.**

5. The learned counsel also urged that the fact that the rent receipts are in the name of Jagjivandas Jethalal should not have weighed with the court inasmuch as quite often the rent receipts continue to remain in the name of a deceased tenant. He, therefore, submitted that the impugned orders deserve to be set aside.

6. Mr. Kapadia, learned counsel for the respondents on the other hand submitted that the whole case of the plaintiff is false, dishonest and malafide. The learned counsel contended that the plaint itself makes it clear that there is no privity of contract between the plaintiff and defendants 1 and 2 and plaintiff and defendants 3 and 4. There is no relationship of tenant and landlord between the parties. Both the courts have rightly held that the Small Causes Court has no jurisdiction to entertain the suit. He submitted that a person whose case is based on falsehood has no right to approach the court. In this connection the learned counsel for the relied on **S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. & Ors., A.I.R. 1994 S.C. 853** &

Maganlal Kuberdas Kapadia v. Themis Chemicals Ltd. In Appeal No. 332 of 1991.

7. It is true that jurisdiction of the court has to be determined on the basis of the averments made in the plaint and the case of the defendant should not weigh with the court. In this case the plaint begins with the statement that the plaintiff has taken the suit premises from Jagjivandas Jethalal in June, 1972. It is further stated that the suit premises were originally taken by late Jagjivandas Jethalal as tenant from defendants 3 and 4 on a monthly rent inclusive of all permitted increases. Admittedly Jagjivandas died in the year 1951, therefore, the case of the plaintiff that in the year 1972 Jagjivandas Jethalal inducted him as sub-tenant in the suit premises can never be accepted.

8. Significantly the rent receipt on which reliance is placed by the plaintiff are issued in the name of Jagjivandas Jethalal by the landlord. If the plaintiff is in possession of the suit premises right from 1972 till date, there ought to have been atleast some evidence to show that at any point of time any consideration was paid by the plaintiff to defendants 1 and 2 or defendants 3 and 4 . There is absolutely no evidence in the form of receipts to connect the plaintiff with defendants 1 and 2 or defendants 3 and 4. The averments of the plaint do not indicate any privity of contract between the plaintiff and defendants 1 and 2. If that is so the plaintiff

cannot claim to be deemed tenant of defendants 3 and 4.

9. It was argued that the plaintiff could have proved his case by adducing evidence. It is significant to note that while deciding the preliminary issue the trial court did give opportunity to the plaintiff to adduce evidence which the plaintiff's counsel declined. Therefore, this does lead to the conclusion that the plaintiff does not have any evidence to indicate that sub-tenancy was created by defendants 1 and 2 prior to 1972 or that plaintiff has become deemed tenant of defendants 3 and 4. The documents on which reliance is sought to be placed could have been brought on record. That is not done. There is nothing in the plaint to indicate that the relationship of landlord and tenant exists between the plaintiff and the defendants. The courts below, therefore, cannot be faulted for having taken a view that Small Causes Court has no jurisdiction.

10. In my opinion, the stand taken up by the plaintiff now that there is an inadvertant error in the plaint cannot be accepted. It appears to me that the courts are right in coming to a conclusion that the plaintiff's claim is malafide. Reliance placed by Mr. Kapadia on the judgment in Naidu's case (supra) and the judgment in **Moganlal Kapadia's case (supra)** is apt.

11. In view of the above, the petition is dismissed.

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